

**Board of Directors' Guide**

# **Preventing Housing Discrimination in Hawaii Condominiums**

**May 1998**

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Prepared by the  
Hawaii Real Estate Research and Education Center  
College of Business Administration, U.H.  
2404 Maile Way, B-201  
Honolulu, Hawaii 96822  
Phone: 808-956-7892  
1-800-642-4756 (toll-free from the neighbor islands)

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# Preventing Housing Discrimination in Hawaii Condominiums

This guide contains vital information regarding state and federal fair housing laws and appropriate aspects of the Americans with Disabilities Act<sup>1</sup>(ADA), including employment discrimination, as applied to condominium communities. The overall focus is on discrimination based upon disability (physical and mental) and familial status, the two protected classes most recently added to the federal fair housing laws.<sup>2</sup>

As a condominium board member, owner, property manager, potential purchaser, renter or employee, it is important to know how provisions of these protective laws may apply to you.

## Section I. What are the Fair Housing Laws?

### Federal Fair Housing Laws

- Civil Rights Act of 1866<sup>3</sup> – made racial discrimination in real and personal property transactions illegal.
- Federal Fair Housing Act and the Federal Fair Housing Amendments Act of 1988.<sup>4</sup>

### Hawaii State Fair Housing Laws

- Hawaii Revised Statutes (HRS), Chapter 515, Discrimination in Real Property Transactions.
- Hawaii Administrative Rules (HAR) §§ 12-46-301 to 318.

## Who is Protected Under these Laws?

### Federal Law

Under federal law<sup>5</sup> it is illegal to discriminate in housing on the basis of:

- **Race**
- **Color**
- **Religion**
- **National Origin**
- **Sex**
- **Handicap**
- **Familial Status** (presence of children under the age of 18, person who is pregnant or any person who is in the process of securing legal custody of a minor child)

### Hawaii State Law

Hawaii fair housing law<sup>6</sup> has added:

- **Marital Status** (state of being married or being single)
- **HIV (Human Immunodeficiency Virus)** the causative agent of AIDS
- **Age**  
The age of majority in Hawaii is 18; age means over the age of majority or emancipated minors.
- **Ancestry**  
Hawaii uses the term **ancestry** as one of its protected groups. **Ancestry** is similar to the federal term “**national origin**.” There are technical differences between the two terms, but generally, they promote the same protective concept.

People who fall into the above categories are members of “protected classes.”

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1 42 U.S.C. §§ 12101-12213 (1994).

2 Federal Fair Housing Act, as amended, *Id.* §§ 3601-3632.

3 8 U.S.C. § 41 (1994).

4 Title III of the Civil Rights Act of 1968, as amended, 42 U.S.C. §§ 3601-3632 (1994).

5 *Id.* § 3604.

6 HAW. REV. STAT. § 515-3 (1993).

**Examples of discriminatory activities under federal law:**

1. Using discriminatory advertising.
2. Providing unequal real estate brokerage and management services.
3. Denying that housing facilities are available when they actually are available.
4. Discriminatory real estate financing.
5. Applying unequal terms, conditions or privileges in the sale or rental of units.
6. Condominium bylaws, house rules or policies containing unequal terms, conditions or privileges.

An important difference between federal and state fair housing law is that federal law applies only to the sale and rental of residential housing,<sup>7</sup> whereas, Hawaii state law applies to any type of real estate transaction, including commercial activities.<sup>8</sup>

While there may be differences, state law is substantially equivalent to, and in some areas, exceeds federal law.

Where differences exist between federal and state law, the law that prevails is that which provides the most protection for the consumer.

In the filing of complaints, those complaints which allege violations of both federal and state fair housing laws are automatically dual-filed. This means that a complaint filed with the federal Department of Housing and Urban Development (HUD) will automatically be filed with the state Hawaii Civil Rights Commission (HCRC). Conversely, a complaint first filed with the HCRC will be dual-filed with HUD. (See **Section IV. Enforcement**, p. 29)

<sup>7</sup> 42 U.S.C. § 3605 (1994).

<sup>8</sup> HAW. REV. STAT. §§ 515-2 to -3 (1993).

<sup>9</sup> 42 U.S.C. § 3602(h) (1994).

<sup>10</sup> HAW. REV. STAT. § 515-3 (1993).

<sup>11</sup> *Id.* § 515-3(8) (Supp. 1997).

What are some other differences between the state and federal fair housing laws?

**1. HIV (Human Immunodeficiency Virus)**

Under federal law,<sup>9</sup> HIV infection is included under the general definition of physical handicap (disability), whereas Hawaii fair housing law specifically names HIV as a protected class.<sup>10</sup>

**2. Guide Dog, Signal Dog, or Service Animal**

Hawaii state law was amended in 1997 to comply with federal law, making it illegal to discriminate against a disabled person who uses the services of a guide dog, signal dog or service animal.<sup>11</sup> These changes are significant to associations. (See **Section III. – Accommodations: Animals**, p. 14)

**3. Hawaii Occupancy Standards**

This is an area which is not well guided by federal law. Each county or state housing agency has defined occupancy via their own interpretation of “occupancy.” (See **Section III. – Familial Status and Occupancy Standards**, p. 24)

A more comprehensive discussion of these and other issues under the protective umbrella of fair housing laws is presented in **Section III. Specific Applications for Condominium Environments**, pp. 9 - 29.

In addition to the fair housing laws, another applicable law is the **Americans with Disabilities Act**<sup>12</sup> (ADA). The protections in the ADA differ from those in the fair housing laws under the “handicap” category.

The following section provides an overview of two sections of the ADA which may directly impact associations: **Title I. Employment** and **Title III. Public Accommodations**.

## **Section II. Americans with Disabilities Act (ADA)**

The Americans with Disabilities Act<sup>13</sup> was enacted in July 1990 and prohibits discrimination against persons with disabilities. There are five basic applications in this Act, two of which may have an impact on association operations:

**Title I. Employment**,<sup>14</sup> prohibits employment discrimination against persons with disabilities, and

**Title III. Public Accommodations and Services Operated by Private Entities**,<sup>15</sup> requires accommodations for the disabled where private establishments serve the public. Title III applies to condominium projects with mixed uses (both residential and commercial units), or those which are solely commercial. It may also become increasingly important to associations as “baby boomers” begin to age and

require more accommodations. (See **Section III. – Aging in Place**, p. 16)

Corresponding state laws include:

- **HRS Chapter 378, Employment Practices**
- **HRS Chapter 489, Discrimination in Public Accommodations**

### **ADA Definition of “Disability”**

The ADA provides comprehensive protection for individuals with disabilities. An individual with a disability is defined as one who:

- Has a physical or mental impairment that substantially limits one or more major life activities<sup>16</sup> and
- Has a record of a disability<sup>17</sup> – i.e., attended an alcoholic treatment center; or
- Is viewed as being disabled<sup>18</sup> – i.e., a facial burn victim or other cosmetic disfigurement or anatomical loss that affects any of the body’s systems. This may include environmental illnesses from pesticides and ventilation systems or chemical sensitivity.

The ADA<sup>19</sup> and state law<sup>20</sup> also provide persons associated with a disabled individual (i.e., caregivers) protection under the “handicap status.”

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12 42 U.S.C. §§ 12101-12213 (1994).

13 *Id.*

14 *Id.* §§ 12111-12117.

15 *Id.* §§ 12181-12189; *see* p. 5.

16 42 U.S.C. § 12102(2)(A) (1994).

17 *Id.* § 12102(2)(B).

18 *Id.* § 12102(2)(C).

19 *Id.* §§ 12182(b)(1)(E), 12112(b)(4).

20 HAW. REV. STAT. § 489-5(b) (1993).

## A. Employment

### When is an Association an Employer?

Under the ADA, an association which employs 15 or more employees is affected by the provisions of Title I.<sup>21</sup> But under corresponding Hawaii state law, an employer is defined as having one or more employees.<sup>22</sup> Therefore, the more stringent state law applies, and associations having one or more employees must observe the non-discriminatory employment requirements of state law.

Professional service agents, such as condominium managing agents (independent contractors) or vendors, are not association employees. An individual hired by an association, such as a resident manager or a groundskeeper, is an association employee, and as an employer, the association is held to the laws and rules relating to employment.<sup>23, 24</sup>

Both the ADA<sup>25</sup> and state law<sup>26</sup> prohibit employers from discriminating in employment against qualified individuals with a disability. This includes job application procedures, hiring, advancement, discharge, compensation, job training and other terms, conditions and privileges of employment.

Example: An individual with a disability, such as deafness, may not be barred from employment as a condominium resident manager solely due to the disability.

Federal laws restrict questions that may be asked about an applicant's disability before a job offer is made,<sup>27</sup> and require employers to make reasonable accommodations to the known physical or mental limitations of otherwise qualified individuals with disabilities.<sup>28</sup>

"Reasonable accommodations" include reasonable or logical adjustments made to a job, or to the work environment, that enable a qualified person with a disability to perform the functions of that position. Keep in mind that reasonable accommodations are required only if it is established that they are "readily achievable"<sup>29</sup> without a burden of undue difficulty or expense. Specific examples of modifications which are considered reasonable include:

- Widening walkways (by moving furniture, acoustic panels, etc.)
- Installing a TTY (text telephone) for a hearing impaired individual
- Relocating switches or controls so that they are reachable by persons in wheelchairs

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21 42 U.S.C. § 12111(5)(A) (1994).

22 HAW. REV. STAT. § 378-1 (1993).

23 42 U.S.C. §§ 12111(4), -(5)(A) (1994).

24 HAW. REV. STAT. § 378-1 (1993).

25 42 U.S.C. § 12111(8) (1994).

26 HAW. REV. STAT. § 378-2 (1993).

27 42 U.S.C. § 12112(2)(a) (1994).

28 *Id.* § 12111(9).

29 *Id.* §§ 12111(9)-(10).



A determination as to what is “readily achievable” and a “reasonable accommodation” depends on the facts and circumstances of each situation. The intent of the legislation is not to give preferential treatment to a disabled person, but to provide qualified individuals with disabilities an equal opportunity to benefit from the full range of employment opportunities available to others.

### **Non-Compliance and Enforcement**

An employer’s violation of the ADA may result in payment of back pay and compliance with a court-ordered injunction to stop discriminatory actions.<sup>30</sup> State law provides somewhat similar remedies (i.e., compensatory and punitive damages).<sup>31</sup>

Regarding discrimination in employment, the federal enforcing agency for the ADA is the Equal Employment Opportunity Commission.<sup>32</sup> In Hawaii, the Hawaii Civil Rights Commission (HCRC) is the state enforcing agency.<sup>33</sup> The HCRC’s functions and powers include the receipt, investigation, and conciliation of complaints alleging unlawful discriminatory practices in employment, public accommodations, real property transactions and access to state and state-funded services.<sup>34</sup> (*See also Section IV. Enforcement*, p. 29; *References*, p. 31)

## **B. Public Accommodations (Title III)**

Title III of the ADA<sup>35</sup> requires accommodations to be made for the disabled where private establishments serve the public.<sup>36</sup> This requirement applies to condominium projects with mixed uses (both residential and commercial units), and to those with solely commercial units.

Facilities which are solely residential in nature are not considered places of public accommodation and are therefore not subject to Title III of the ADA. Facilities or amenities which exclusively serve residents and their guests are also not subject to Title III.<sup>37</sup> Note that the fair housing laws do contain accessibility requirements which apply to certain types of new multifamily dwellings and units within covered multifamily dwellings.<sup>38</sup> (*See Section III. – Accessibility*, p. 9)

However, common areas within residential facilities are considered places of public accommodation if they are open to persons other than residents and their guests. These areas include rental and sales offices, clubhouses and recreation rooms available for rent or lease, retail stores or restaurants on the premises.<sup>39</sup>

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30 42 U.S.C. § 12117(a) (1994).

31 HAW. REV. STAT. § 378-5 (1993).

32 42 U.S.C. § 12111(1) (1994).

33 HAW. REV. STAT. § 378-1 (1993).

34 *Id.* § 378-3.

35 42 U.S.C. §§ 12181-12189 (1994).

36 *Id.* § 12181(6)-(7).

37 *Id.* § 12187.

38 *Id.* § 3604(f)(2)(A)-(C).

39 *Id.* § 12181(7)(A)-(L).

A public accommodation is required to:

1. Provide goods and services in an integrated setting (unless separate or different measures are necessary to ensure equal opportunity).<sup>40</sup>
2. Eliminate unnecessary eligibility standards or rules that deny individuals with disabilities an equal opportunity to enjoy the goods and services of a place of public accommodation.<sup>41</sup> For example, an association which offers swimming pool privileges (membership) to the public cannot require a disabled person to prove that he/she can swim.
3. Make reasonable modifications in policies and procedures that deny equal access to individuals with disabilities, unless such modification would fundamentally alter the nature of the goods or services provided.<sup>42</sup> Example: Permitting an individual with a handicap to mail documents rather than bring them in person to the management office. (*See also Section III. – Accommodations: Animals: Pets*, p. 15)
4. Furnish auxiliary aids when necessary to ensure effective communication, unless an undue burden or fundamental alteration would result.<sup>43</sup> For example, providing association documents in

large print or braille for the visually impaired. Personal devices such as hearing aids or wheelchairs are not required to be provided.

5. Remove architectural and structural communication barriers in existing facilities where “readily achievable.”<sup>44</sup> Architectural barriers are physical obstacles inhibiting movement (absence of ramps, non-automated doors, etc.), and communication barriers inhibit interaction between people (i.e., no accessible intercom system, etc.). Under the fair housing laws, associations must allow modifications to accommodate a disability, including reasonable modifications to common areas. Such modifications are at the expense of the disabled individual, (i.e., installing grab bars, lowering light switches, etc.) and other conditions may apply.<sup>45</sup> (*See Section III. – Accommodations*, p. 10)

Under Title III of the ADA, associations may bear the costs of modifying a building or common area and making other accommodations.<sup>46</sup> The major differences between reasonable modifications under the fair housing laws and barrier removals under the ADA are:

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<sup>40</sup> 42 U.S.C. § 12182(b)(B) (1994).

<sup>41</sup> *Id.* § 12182(b)(2)(A)(i).

<sup>42</sup> *Id.* § 12182(b)(2)(A)(ii).

<sup>43</sup> *Id.* § 12182(b)(2)(A)(iii).

<sup>44</sup> *Id.* § 12182(b)(2)(A)(iv).

<sup>45</sup> *Id.* § 3604(3)(A).

<sup>46</sup> *Id.* § 12183(a)(2).

- 1) What modifications need to be made?
  - 2) Who is responsible for making them?
6. Maintain accessible facilities and equipment.<sup>47</sup>
7. Design and construct new facilities, and when undertaking alterations, alter existing facilities in accordance with the ADA Accessibility Guidelines issued by the Architectural and Transportation Barriers Compliance Board and incorporated in the final Department of Justice Title III regulations.<sup>48</sup> (*See also Section III. – Accessibility*, p. 9)

These requirements may affect association replacement reserves as well as rules and policies. Although associations are not expected to accommodate every disability, they should obtain guidance regarding the types and costs of modifications that may be necessary in the future. These may include replacement and/or modification of drinking fountains, elevators, ramps and clubhouses which should be accessible.<sup>49</sup>

Associations should not underestimate the importance of reviewing replacement reserves which may be affected by required modifications and accommodations for the disabled.

Keep in mind that “reasonable accommodation” is case specific, often requiring determination by the courts. Each situation is judged on its merits, balancing the needs of the disabled against the burden of the accommodation.

Example: There are four steps at the entrance to the resident manager’s office, but it is not structurally feasible to install a ramp. Association documents which must be made available for viewing by the public are located in the office. The manager may arrange to make the documents available in the lobby or another area to accommodate an individual in a wheelchair. This would be an example of relocating an activity to an accessible location.

An accommodation may be unreasonable if it imposes undue financial difficulties or excessive administrative burdens.<sup>50</sup> Courts consider the nature of condominium associations and what accommodations may or may not be within an association’s power of compliance.

### Non-Compliance and Enforcement

In the area of public accommodations, an individual who has been discriminated against may:

- Bring a private lawsuit to obtain a court order to stop the discrimination.<sup>51</sup>

47 42 U.S.C. § 12183(a)(2) (1994).

48 *Id.* § 12183(a)(1)-(2); *See also* 36 C.F.R. § 1191.2 (1997).

49 42 U.S.C. § 12183(a)(2) (1994).

50 *Id.* § 12181(9)(A)-(D).

51 *Id.* § 12188(a)(2).

- File a complaint with the U.S. Attorney General.<sup>52</sup> (*See References – Title III, ADA*, p. 31)
- File a complaint with the state Hawaii Civil Rights Commission.<sup>53</sup>

Under the ADA, when a complaint is filed with the Attorney General, the Attorney General may file a lawsuit if there is reasonable cause to believe that any person or persons are engaged in a pattern or practice of discrimination, or that the discrimination raises an issue of general public importance.<sup>54</sup> Lawsuits may also be brought to stop the discrimination and obtain money damages and penalties. Civil penalties may be assessed in an amount not exceeding \$50,000 for a first violation and not exceeding \$100,000 for any subsequent violation.<sup>55</sup>

Violations of state laws barring discrimination in public accommodations may result in:

- A civil suit brought by an aggrieved individual. The judgment may be a sum not less than \$1,000 or threefold damages sustained by the plaintiff, whichever sum is greater, and reasonable attorneys' fees and court costs.<sup>56</sup>

- A fine of not less than \$500, nor more than \$10,000, for each violation.<sup>57</sup>
- A civil suit brought by the State Attorney General or the Hawaii Civil Rights Commission resulting in a fine. Each day of violation is considered a separate violation.<sup>58</sup>

Associations should consult with legal counsel to determine the scope and applicability of the ADA to their particular project.

Discrimination in housing against the handicapped under the fair housing laws is discussed in the following section.

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52 42 U.S.C. § 12188(b) (1994).

53 HAW. REV. STAT. § 489-6 (1993).

54 42 U.S.C. § 12188(b)(1)(B)(i)-(ii) (1994).

55 *Id.* §12188(b)(2)(C)(i)-(ii).

56 HAW. REV. STAT. § 489-7.5(a)(1) (1993).

57 *Id.* § 489-8.

58 *Id.*

## Section III.

### Specific Applications for Condominium Environments

This section provides topical discussions of various aspects of federal and state fair housing laws which may impact condominium associations.

#### Accessibility

The Fair Housing Act made it illegal to discriminate in housing on the basis of a disability,<sup>59</sup> and further, made it illegal to design and construct certain multifamily dwellings for first occupancy after March 13, 1991, in a manner that makes them inaccessible to persons with disabilities.<sup>60</sup> (See also **Accommodations**, p. 10)

#### Requirements for New Buildings

The Fair Housing Act requires buildings designed and constructed for first occupancy after March 13, 1991 which have an elevator or four or more units to have:

- Public and common areas accessible to persons with disabilities.
- An accessible building entrance on an accessible route.
- Doors and hallways wide enough for wheelchairs.<sup>61</sup>

All units must have:

- An accessible route into and through the unit.
- Accessible light switches, electrical outlets, thermostats and other environmental controls.
- Reinforced bathroom walls to allow installation of grab bars.
- Kitchen and bathrooms that can be used by people in wheelchairs.<sup>62</sup>

If a building with four or more units lacks an elevator and was ready for first occupancy after March 13, 1991, these standards apply only to the ground floor units.<sup>63</sup>

The requirements for new buildings do not replace more stringent standards in state law or county ordinances.<sup>64</sup>

HUD has published Fair Housing Accessibility Guidelines<sup>65</sup> to provide builders and developers with technical guidance on how to comply with the accessibility requirements of the fair housing laws listed above.

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<sup>59</sup> 42 U.S.C. § 3604(f)(2)(A)-(C) (1994).

<sup>60</sup> *Id.* § 3604(f)(3)(C).

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* § 3604(f)(7).

<sup>64</sup> *Id.* § 3604(f)(8).

<sup>65</sup> 24 C.F.R. § 100.200-100.205 (1997).

## Accommodations

Under the federal Fair Housing Act, one of the two most recently added categories, **handicap**, has a somewhat different impact on condominium associations than Title III – Public Accommodations. (See also **Section II. ADA**, p. 3; **Appendix A – Summary of the Law, ADA**, p. 36)

### How is Handicap Defined in the Federal Fair Housing Law?

Handicap, or the more appropriate term used in the 1990 legislation, “disabled” or “disability,” is defined as a person having a **mental** or **physical disability** which limits one or more of his/her major life activities.<sup>66</sup> Physically, this may mean the person has AIDS, AIDS Related Complex or cancer, or has a mobility, speech, visual or hearing problem. Mental disability includes mental illness, as well as chronic alcoholism. The definition includes those with a present disability, as well as those who have a history or record of a disability. An individual with a disability must:

- Be permitted to make **reasonable modifications** to the dwelling or common use areas, at the individual’s expense, if necessary for the disabled person to use and enjoy the dwelling or common area.<sup>67</sup>
- Be allowed **reasonable accommodations** in rules, policies, practices or services if necessary when such accommodations are necessary to use and enjoy a dwelling.<sup>68</sup>

### Reasonable Modifications Cannot be Denied!

Disabled persons may, at their own expense, make “reasonable modifications” to a housing unit in order to enjoy the premises.<sup>69</sup> In condominiums, this law generally has a larger impact on rental units as opposed to owner-occupied units. Depending on the extent of the modification, an owner may have to notify and/or receive permission from the board before allowing a tenant to proceed with modifications.

A reasonable modification may mean the widening of a doorway for wheelchair use or installing grab bars in a bath area. The tenant must be made aware that he/she is responsible for restoring the unit at the end of the tenancy, if it is reasonable to do so, and if the modifications interfere with the use of the unit by the owner or the next tenant.<sup>70</sup>

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66 42 U.S.C. § 3602(h)(1) (1994).

67 *Id.* § 3604(f)(3)(A).

68 *Id.* § 3604(f)(3)(B).

69 *Id.* § 3604(f)(3)(A).

70 12 H.A.R. § 46-306(4)(C) (1991).

Example: An extensive modification which may require restoration is the lowering of sinks and countertops for a wheelchair bound person.

Charging a higher security deposit is not permissible, even for extensive structural modifications. In limited circumstances, an owner may require the establishment of an escrow fund (with interest accruing to the disabled tenant for the removal of modifications). Such funds may only be used for restoration of the property, and may only be considered reasonable for extensive structural modifications on a short-term lease. Any portion of the fund, including interest, that is not required for the restoration of the premises must be reimbursed to the disabled tenant who paid into the fund.<sup>71</sup>

Restoration is not necessary for those modifications which do not interfere with the owner's or next tenant's use and enjoyment of the premises.

Example: A tenant with a disability receives permission to install grab bars in the bathtub and widen doorways. It is not necessary to remove the blocking (reinforcement in the wall) or narrow the doorways to restore the premises because reinforced walls and wider doorways will not interfere with the owner's or next tenant's use and enjoyment of the premises. However, the tenant can be required to remove the grab bars and restore the walls to the condition that existed before the modifications, reasonable wear and tear excepted.<sup>72</sup>

The "reasonable modification" aspect of the fair housing law also includes common areas of the condominium project which are provided for the exclusive use of residents and their guests.<sup>73</sup> Thus, if a disabled person requests to install an access ramp to a recreation area, he/she must be permitted the modification, at his/her own expense.

In summary, the fair housing laws require that condominium units and common areas (laundry room, clubroom, etc.) be available, with reasonable modification, to the disabled. Condominium associations and owners are prohibited from denying housing opportunities on the basis of a physical or mental disability.

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71 12 H.A.R. § 46-306(4)(C) (1991).

72 Id.

73 42 U.S.C. § 3604(f)(3)(A) (1994).

### **Reasonable Accommodation Must Be Accomplished!**

Reasonable accommodation for a disabled tenant is required in order to provide the privilege, service or facilities of a housing project. The number and types of requests for reasonable accommodations have increased over time. Requests for reasonable accommodations relating to animals/pets are perhaps one of the more common issues encountered by associations, as discussed later in this section (*See Accommodations, Animals: Pets*, p. 15). Another important accommodation issue involves parking, especially in metropolitan areas where parking is at a premium.

### **Parking Spaces**

Example: Kanoa Gardens is a three hundred unit apartment complex with four hundred fifty parking spaces which are available to tenants and guests on a “first-come-first-served” basis. Paul applies for housing in Kanoa Gardens. Paul has a mobility impairment and is unable to walk more than a short distance and therefore requests that a parking space near his unit be reserved for him so he will not have to walk very far to get to his apartment. It is a violation of the law for the owner or manager of Kanoa Gardens to refuse to make this requested accommodation. Without a reserved space, Paul may not be able to live in Kanoa Gardens at all or, when he has to park in a space far from his unit, might have great difficulty getting from his car to his apartment unit. The accommodation, therefore, is necessary to afford Paul an equal opportunity to use and enjoy a housing accommodation. The requested accommodation is reasonable because it is feasible and practical because of the number of unassigned parking spaces available.<sup>74</sup>

Although a request appears to be “reasonable,” such as the one described in the example above, there may be conditions which preclude an association’s ability to accommodate, as illustrated in the following Ohio case.

Example: Each unit in the Fairway Villas had a designated parking space (a limited common element) in a garage apart from the building. There were also common, uncovered parking spaces available throughout the complex on a first-come-first-served basis.

Mrs. Woodruff’s parking space was located about 50 yards from her unit. Health problems made it difficult for Mrs. Woodruff to walk the

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<sup>74</sup> 12 H.A.R. § 46-306(3) (1991).



distance. She requested that one of the uncovered common area spaces adjacent to her unit be designated as a handicapped space. The request was denied.

The U.S. District Court in Ohio<sup>75</sup> ruled that the association had acted properly, based upon specific clauses in the Ohio Condominium Act which provided that common areas were owned by all unit owners as tenants in common. Converting a common element parking space to a limited common element handicapped space required an amendment to the declaration which must be unanimously approved by all affected owners. Thus, the association lacked the authority to unilaterally accommodate Mrs. Woodruff, and therefore did not discriminate against her.

This case serves to illustrate the fact that associations cannot make an accommodation where it is not within their authority to do so. In some states, associations have the authority to control the use of common elements. In Hawaii, as in Ohio, the conversion of a common element to a limited common element, requires the consent of apartment owners unless such authority is stated in the association's declaration of condominium property regime.<sup>76</sup>

### **Chemical Sensitivity**

Another issue commonly faced by associations involves individuals who suffer from more than simple allergies. As new chemical products are developed and the global environment is threatened by increasing pollution, more individuals are developing "chemical sensitivity" to chemical products and pollutants.

A recent ruling by a Hawaii court on reasonable accommodations for an individual with Multiple Chemical Sensitivity Disorder (MCS) offers some guidelines.<sup>77</sup>

Ms. Slocum said she suffered from MCS and made a number of accommodation requests. The court ruled on the following issues:

- Painting the exterior hall with a "safe" paint, though more expensive, was a reasonable accommodation.
- The association did not have to program one of its two elevators to stop only on Slocum's floor, as she demanded.
- The association did not have to replace its parking lot with concrete (to avoid patching with asphalt).

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75 U.S. v. Fairway Villas Condominium Ass'n, 879 F. Supp. 798 (N.D. Ohio 1995), *vacated*, 920 F. Supp. 115 (N.D. Ohio 1996) (After the 1995 decision, the parties mediated the problem, and agreed to make a reasonable accommodation. In 1996, the court issued a new order vacating its previous decision).

76 HAW. REV. STAT. § 514A-13 (1993).

77 Ass'n. of Apartment Owners of Hawaii Princess at Makaha Beach v. Slocum, No. 93-844, (D. Haw. July 8, 1994).

- The association could repaint a fence for \$150 instead of replacing it for \$1,600, as requested by Slocum.
- The court ordered that the association provide Slocum with advance notice of all repair work, including a list of chemicals to be used, and undertake such work, if possible, when she was outside the complex (apparently she travelled frequently).
- The association must use materials proposed by Slocum if they are effective and if the cost is not more than 10 percent higher than the association's method. If Slocum's proposed materials cost more, the association must allow her to pay the difference.

While these rulings were deemed "reasonable," they did place substantial burdens on the association.<sup>78</sup>

The examples and cases described above clearly illustrate that requests for reasonable accommodations must be taken seriously. Associations must respond to these requests, and where feasible and practical, make the accommodations. Exceptions may be permitted where the accommodations requested are unreasonably expensive or not feasible.

### **Animals: Guide Dog, Signal Dog or Service Animal**

Hawaii law does not allow discrimination against a disabled person who uses the services of a guide dog, signal dog or service animal.<sup>79</sup> Changes to Hawaii Revised Statutes § 515-3(8), enacted in the 1997 legislative session, are applicable to associations.

1. The requirement that a guide or signal dog must be **certified** by a nationally recognized guide dog organization was removed. The law now requires only that the service **animal** be "trained to provide those life activities limited by the disability of the person."<sup>80</sup>
2. The term "service dog" was changed to "service **animal**."<sup>81</sup>

Reasonable restrictions or prohibitions regarding service animals may still be imposed by associations and individual landlords. The definition of "reasonable restriction" in HRS § 515-8(8) states that the "reasonableness" of a restriction shall be examined by giving due consideration to the needs of a reasonably prudent person in the same or similar circumstances.

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<sup>78</sup> Seth Emmer, *The Needs of the One*, COMMON GROUND, Mar./Apr. 1996, at 25-26.

<sup>79</sup> HAW. REV. STAT. § 515-3(8) (Supp. 1997).

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

Example: An owner may be held responsible for damage caused by a dog, or for fumigating, deodorizing or hiring a professional cleaning service upon vacating the premises.<sup>82</sup>

### **Animals: Pets**

Rules regarding pets differ from the laws requiring accommodations to be made for service animals and guide or signal dogs. Since a handicap is defined as physical or mental under fair housing law, an association with a “no pets” policy may have to permit an animal which is used to help control a mental, as well as a physical disability.<sup>83</sup> If the need for the animal is documented, it is a violation of both federal<sup>84</sup> and state<sup>85</sup> fair housing laws for an association to refuse to make a reasonable accommodation.

When a reasonable accommodation is made by an association, the individual with the disability who accepts the accommodation then has the obligation to be a responsible pet owner.

For example: A Connecticut court<sup>86</sup> ruled in favor of an association by ordering a tenant with severe schizophrenia to remove his dog. Numerous attempts to counsel the tenant to provide proper care for the dog, provision by the association of a dog walking area, and other efforts to assist the tenant in caring for the dog had failed. The court stated that because of the tenant’s marginal ability to live independently, he was not able to take advantage of the opportunities offered to him. The failure did not make the accommodation unreasonable, rather the tenant’s disability made him incapable of being reasonably accommodated.<sup>87</sup>

The need for an accommodation permitting a pet depends on the specifics of the situation and requires verification in the form of a letter provided by a doctor or other medical professional, such as a licensed psychologist. A full medical history is not required. The information needed is:

- Verification that an individual has a covered disability;
- A statement that an accommodation is needed;
- Why the accommodation is needed; and
- Why the proposed accommodation will be helpful to the individual.

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82 HAW. REV. STAT. § 515-3(8) (Supp. 1997).

83 42 U.S.C. § 3602(h) (1994).

84 *Id.* § 3604(3)(B).

85 HAW. REV. STAT. § 515-3(11) (1993).

86 *Woodside Village v. Hertzmark*, 4 N.D.L.R. 104 (1993).

87 Seth Emmer, *The Needs of the One*, COMMON GROUND, Mar./Apr. 1996, at 20.

## Advertising

Advertising does not refer solely to newspaper advertisements. It also includes bulletin board notices, shopper's notices, newsletters and verbal statements made by agents or owners.

In advertising individual units for sale or rent, owners and agents should answer factual questions about the property, but should not make "value" judgements for others by making statements such as, "This isn't a good place for a family," or "This is a quiet place, so it might be difficult with children in the unit." Attempting to discourage buyers or renters because of a protected personal characteristic by pointing out negative features in a neighborhood or unit may be violating the fair housing laws.

It is acceptable to advertise a unit as being handicapped accessible, or to mention any services or amenities that might be attractive to a disabled person such as the availability of TDD (telecommunications for the deaf devices) or braille brochures.<sup>88</sup>

## "Aging in Place"

This is a term with which associations should become familiar. Although a project may not have been intended as a "senior community" when it was initially developed, residents are "aging in place" and life expectancy is increasing. Residents who purchased units ten years ago at age 55 are now 65 years old and may begin to request more accommodations for physical disabilities.

Example: Aging residents may request:

- More handicapped parking (or parking in close proximity to entrances or to units),
- Wheelchair access, a sign language interpreter at annual association meetings or large print governing documents and other association reports.

As buildings age along with the tenants, repairs and renovations become necessary. Alteration of existing facilities must be in accordance with the ADA Accessibility Guidelines issued by the Architectural and Transportation Barriers Compliance Board (ATBCB).<sup>89</sup> These alterations may be more costly than simply making repairs or replacements to existing structures.

Associations should consult with legal counsel to determine the scope and applicability of the ADA and/or other laws regarding requests for accommodations.

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<sup>88</sup> NEWSPAPER ASSN. OF AM., FAIR HOUSING ADVERTISING, p. 7 (1994).

<sup>89</sup> 42 U.S.C. §12204 (1994); see also 36 C.F.R. § 1191.2 (1997).

## Housing For Older Persons

“Aging in place” raises another concern, that of a changing environment in a condominium community. As the number of aging residents increases, a resistance to having children in the project may develop, initiating a movement to become a designated senior community.

The Housing for Older Persons Act (HOPA),<sup>90</sup> which further amended the Fair Housing Act, eases the qualifications that senior housing must meet to be considered eligible as “housing for older persons.” A project may be designated as senior housing provided that:

- At least 80 percent of the occupied units are occupied by at least one person who is 55 years of age or older.
- The housing facility or community publishes and adheres to policies and procedures that demonstrate an intent to be classified as housing for older persons (rather than housing for adults or for singles, for example).
- The housing facility or community complies with rules by the Secretary of HUD for verification of occupancy.<sup>91</sup>

(See also **Appendix A – Summary of the Law, HOPA**, p. 38)

## Bylaws, House Rules

Bylaws and house rules which govern an association should be structured to discourage discrimination. Policies should be developed and implemented for the safety and well-being of all residents. (See also **Children and Recreational Facilities**, p. 20)

Review and revise house rules which may be construed as discriminatory. Be certain that the rules apply to all residents.

Problems should be documented as they occur. A log provides much needed documentation. In case of problems, regardless of an individual’s protected status, a log can document a history of complaints by other residents, or violent or abusive behavior which justifies the development and implementation of rules.

*QUESTION: The units in our building above the 4th floor have lanais with guard rails. Can we prohibit the sale or rental of these units to families with young children?*

*ANSWER: No. It is up to the parents or guardians who will be purchasing or renting the units to decide whether it is a suitable place for their family.*

<sup>90</sup> Pub. L. No. 104-76, §§ 1-3, 109 Stat. 787 (1995).

<sup>91</sup> 42 U.S.C. § 3607(b)(2)(C) (Supp. II 1995).

## REGARDING CHILDREN

**QUESTION:** I'm on the Board of Directors and we've been told that we cannot have a rule which requires children under the age of 12 to be accompanied by an adult while in the swimming pool area. Why not? What happens if a child drowns?

**ANSWER:** The law is not 100% clear, but it is normally recommended that condominium associations do not adopt such a rule. The Hawaii Civil Rights Commission (HCRC) adopted regulations which say it is discriminatory to restrict or prohibit the use, by children, of common use or public use areas unless based on business necessity. The Commission defines business necessity very narrowly. While there is some question whether the Commission's rules are themselves legal, the better approach may be to avoid a claim that you are discriminating against children.

This is, in part, because a rule requiring children under a certain age to be accompanied by an adult does not necessarily prevent lawsuits in the event of a drowning. Instead, condominium associations should consider placing prominent notices around the pool and sending notices to residents. The notice should state that there are no lifeguards on duty and that anyone using the swimming pool does so at their own risk. Owners and tenants should be notified that they are responsible for making sure that anyone from their apartment using the swimming pool is a competent swimmer. Finally, the Association should make sure that the swimming pool is properly fenced and that there are no hazardous conditions like irregularities in the pool deck that could cause someone to trip and fall into the pool.

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**QUESTION:** Our condominium has an outside unattended pool and jacuzzi. The board of directors issued two new house rules: (1) no babies in arms would be allowed in the jacuzzi and (2) no children below the age of 12 would be allowed in the pool unless accompanied by an older person. Both house rules were written for health and safety reasons. Are these house rules in violation of any state or federal laws?

**ANSWER:** Most likely, yes. Both state and federal laws prohibit discrimination in a real estate transaction based upon familial status (that is, having children in a family). Chapter 515 of the Hawaii Revised Statutes prohibits any provision in a written document relating to real property that tries to forbid or restrict the occupancy of people because they have children. Thus, the Hawaii Civil Rights Commission, which enforces the chapter, may void the restrictive use of the jacuzzi and pool.

Under federal law, specifically, the Fair Housing Act of 1988, it is a violation to limit the use of privileges, services or facilities associated with a dwelling because of the presence of children. In the past, officials with the U.S. Department of Housing and Urban Development (HUD) have found age restrictions for the use of a jacuzzi or pool to be violations of federal law. Again, the house rules would likely be voided. Also, the fact that the house rules were implemented for health and safety reasons may not be sufficient to justify the state and federal violations.

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## Bylaws, House Rules Children

Associations sometimes develop and implement house rules which are directed specifically at children. Under the federal Fair Housing Act, it is a violation to limit the use of privileges, services and facilities because of the presence of children.<sup>92</sup> Rules that apply specifically to children may be written with the intention of protecting the health, safety and/or welfare of the child, as long as the rules do not restrict or allow special privileges to certain age groups.

92 42 U.S.C. § 3604 (1994).

Discrimination against children occurs most frequently when rules are implemented which “define” children by age. For example, an association’s house rules state:

“2. CHILDREN - Children under the age of seven (7) years must not operate the elevators. All children, regardless of age, will not be permitted to roam on floor. Loitering and gathering in the hallways will not be permitted. Parking areas must not be used for recreation (i.e., baseball, football, skating, bike riding, etc.) PARENTS OR GUARDIANS ARE RESPONSIBLE FOR THE CONTROL OF THEIR MINORS.” (Feb., 1986)

Care should be taken in developing house rules targeting children, such as this one, to assure that the rules are in the best interest of the health, safety and well-being of the children. Terms should be clearly defined and where applicable, reasons for the conditions explained. How or why was the limit for elevator operation set at “children under the age of seven”? It may be argued that this rule discriminates against “latch-key” children returning home from school. Also, there is no definition of the phrase “roam on floor.” While the dictionary may define “roam” as “to wander without purpose or direction,” another definition is “to travel purposefully, unhindered through a wide area.” (Webster’s New Collegiate Dictionary, 1994 ed.). How is a restriction against “all children” roaming on the floors in the interest of the health, safety and well-being of the children?

In the following example, a restriction was placed on the use of a common element which may be deemed unreasonable if applied to all “children” as defined by law (those under the age of 18):

LAUNDRY ROOM - . . . Only persons actually using the laundry facilities are permitted in this area. Children unattended will not be permitted in the laundry room.

This rule, if applied to a 16-year old (i.e., legally defined as a child) who had the responsibility for doing the family laundry, may be discriminatory .

Rules should be written to apply to **all** persons. For example:

- Pool rules may require all pool users to possess swimming skills, not just children, or “children below the age of 7.”

- Use of a laundry room or workshop area may require that all users know how to properly operate the equipment according to clearly posted safety precautions and may include a user log.
- Parking lots should not be used as recreational areas by any resident due to the potential danger of being struck by a car or damage to the cars.

To avoid families with young children viewing rules as a violation of their rights under the “familial status” protected class, associations should avoid arbitrarily setting a minimum age for children unless the rules are intended to protect the health, safety and welfare of the child. Associations should not restrict or allow special privileges to particular age groups.

### **Children and Recreational Facilities**

Some condominium house rules (generally those published prior to the federal Fair Housing Act of 1988) contain rules pertaining to children that limit their use and enjoyment of condominium facilities. Associations should update their house rules and other governing documents to delete provisions which arbitrarily target children.

What can an association do other than prohibit children from playing in common areas? The following positive alternatives are suggested:

- Give children a place to play – provide “tot lots” and other recreational facilities designed for use by children. Install attractive, interesting equipment in a safe location.
- Because rollerblading and skateboarding may create unsafe situations and cause undue wear and tear on the property, educate parents regarding this risk. Arrange for a presentation by an expert (such as a police officer, recreation director, etc. ) to discuss the hazards and ways to safeguard such activities.

Again, be sure that rules that apply specifically to children are intended to protect the health, safety and welfare of the child and not just to restrict or allow special privileges to particular age groups.



## **Committees for Association Membership**

Often described as “screening” committees or “welcoming” committees, (*see also* **Bylaws, House Rules**, p. 17) association committees that screen prospective residents and/or welcome new residents must uniformly apply procedures, policies and rules to all individuals. It is imperative that equal treatment be accorded to all persons to avoid discriminatory situations. The key to prevention is to educate committee members, owners, managing agents and others involved in association activities.

## **Condominium Managing Agents & Real Estate Licensees**

### **Condominium Managing Agents**

Condominium managing agents must be licensed real estate brokers in the State of Hawaii.<sup>93</sup> As real estate licensees, managing agents must comply with fair housing laws.<sup>94</sup>

### **Real Estate Licensees**

A real estate licensee representing a client must not discriminate in any service and/or action on behalf of clients and customers (includes sellers and buyers).<sup>95</sup> Even if, for some reason, the owner (seller) is exempt from the provisions of the fair housing law, the real estate agent is not.

In Hawaii, the Hawaii Real Estate Commission, Professional and Vocational Licensing Division, Department of Commerce and Consumer Affairs has maintained a vigorous policy of education for real estate licensees in the area of fair housing.

## **Disparate Impact and Disparate Treatment**

Readers may be familiar with discrimination in the form of obvious restrictions against a protected class (i.e., no children permitted). Disparate impact and disparate treatment, however, occurs when an action has a greater impact on a protected class of people than on the public in general.

While widely used in describing fair housing practices and actions, the theories of disparate impact and disparate treatment are not defined in fair housing law. They have been “borrowed” from employment law and successfully applied to fair housing cases.

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93 HAW. REV. STAT. § 514A-95(a)(1) (1994).

94 *Id.* § 514A-3.

95 *Id.*

**Disparate Impact** is generally defined as the uniform application of a policy/action that has the effect of denying housing to members of a protected class.

It is important for condominium associations to understand this concept because it is possible to create a disparate impact even when an action or a policy does not appear to have a relationship to a protected class.

Example: Restricting a two-bedroom unit to only two people could be deemed to have a “disparate impact” on families with children by excluding couples with one or more children.

Example: A one-person occupancy limit for a studio apartment may have an adverse effect on a handicapped person who requires a live-in care provider.

### **Proving “Disparate Impact”**

Disparate impact against a protected class may be shown when a restriction has a statistically disproportionate effect on a protected class. The defendant must then show that the disproportionate effect is a result of a valid nondiscriminatory practice or policy, or is justified due to a “business necessity.”

“Business necessity” is defined as a compelling and well-established public purpose which also establishes that there is no reasonable alternative means of serving the same purpose with less discriminatory impact.<sup>96</sup>

The application of the “business necessity” defense may be valid where not adhering to the restriction may be shown to be “unreasonable.”

Example: An occupancy limit which adversely impacts a protected class may be valid. If the occupancy limits are consistently exceeded, this will stress a building’s infrastructure – including waste disposal capacity, load-bearing capacity, water pressure, etc. Even before these capacities are exceeded, personal comfort and tolerance levels may be exceeded (i.e., overcrowded elevators, increased levels of traffic and noise). In this case, acceptable limits may be enforceable. Substantial deviations from the occupancy standards of a city/county housing code, however, should be evaluated for potential “disparate impact.” (See also **Familial Status and Occupancy Standards**, p. 24)

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96 12 H.A.R. § 46-302 (1997).

**Disparate Treatment** is defined as the unfavorable or unfair treatment of an individual in comparison to others similarly situated due to a person's protected status.

Disparate treatment generally involves the inconsistent or unfair application of a rule, policy or practice against one individual. This treatment is also referred to as "unequal" or "differential treatment."

Example: A home care provider is told that he cannot use the laundry facilities because his patient is HIV positive and other tenants fear infection from using the same machines.

## Familial Status

When first added as a category under the umbrella of the Fair Housing Act (1988), familial status became the focus of the majority of the claims, rather than the "handicap" category which was added at the same time.

### How is Familial Status Defined in the Federal Law?

Familial status is defined as one or more individuals who have not attained the age of 18 years who are:

- Living with a parent or person having legal custody.
- Living with a designee or a parent or person with custody and with written permission of the parent.<sup>97</sup>

Also covered under this category are:

- Pregnant persons with no children.
- Anyone securing legal custody of a child under the age of 18.<sup>98</sup>

Families with children, under this definition, cannot be discriminated against in terms of housing. This category of protected persons cannot be treated differently than other tenants, for example, by being assigned only to certain floors or by having certain house rules applicable only to them. Condominium associations which restrict children to certain areas or recreational hours may be discriminating on the basis of familial status. (*See also Children and Recreational Facilities*, p. 20)

Does this protection mean that a condominium owner cannot advertise a unit for adults or couples only? Yes, such advertisement would violate the federal law.<sup>99</sup> The only circumstances that allow discrimination against familial status involve: 1) a housing complex

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97 42 U.S.C. § 3602(k) (1994).

98 *Id.*

99 *Id.* § 3604(c).

that has been built and/or designated as housing for older persons<sup>100</sup> (*See also Aging in Place*, p.16; **Appendix A – Summary of the Law, HOPA**, p. 38); 2) a building consisting of 4 or less units when the owner resides therein;<sup>101</sup> or 3) under Hawaii law, no more than a duplex, when the owner resides therein.<sup>102</sup>

### **Familial Status in Hawaii State Law**

While Hawaii’s definition of familial status parallels the federal definition, it has a unique and specific inclusion for “**hanai relationship**” which:

includes a child who is taken permanently to reside, be educated, and reared by someone other than the natural parents, traditionally a grandparent or other relative, with the written or unwritten permission of the natural parents.<sup>103</sup>

A *hanai* child is not an adopted or foster child. The statutory recognition gives *hanai* children standing under the protected class of “familial status” under Hawaii state law.

### **Familial Status and Occupancy Standards**

Occupancy limits can create a disparate impact on families, especially when they are enforced in such a way as to have a disparate impact on a protected class (i.e., familial status).

Example: House rules (e.g., “two person limit to a bedroom”) which have the effect of discriminating (“adverse impact”) against persons with children (because the overall square footage may be large enough under the housing code for three persons) are unlawful unless the rule can be justified by establishing a business necessity.<sup>104</sup> (*See* definition of “business necessity” on p. 22)

There has been much confusion in the area of occupancy standards. To date, there is no federal standard or “model” occupancy standard.<sup>105</sup>

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100 42 U.S.C. § 3607(2)(C)(Supp. II 1995).

101 *Id.* § 3603(b)(2) (1994).

102 HAW. REV. STAT. § 515-4 (1993).

103 12 H.A.R. §§ 46-302, 46-67(1997) (emphasis added).

104 12 H.A.R. § 46-307 (1997).

105 In a July 1995 memorandum, HUD’s General Counsel attempted to rescind the “2-person standard,” outlining a standard drawn from the Building Officials and Code Administrators (BOCA) Code. However, in a September 1995 memorandum regarding the new standard, the Acting Deputy Assistant Secretary for Policy and Initiatives ordered that “until a final rule has been issued, all cases involving facially neutral occupancy should be referred to the Office of Investigations for concurrence before issuance. In this interim period, investigations should continue as they were conducted prior to issuance of the July 12 memorandum, including gathering of information about the size and configuration of the unit(s) in questions, as well as information about applicable state or local occupancy codes.” To date, no final ruling has been issued changing the standard to the BOCA Code.

Instead, the Fair Housing Act allows housing providers to adhere to any reasonable local, state or federal regulations that may apply regarding the maximum number of persons permitted to occupy a dwelling.

FEDERAL: HUD allows generally that two persons per bedroom is considered to be reasonable.<sup>106</sup> Reasonableness is, however, judged on a case-by-case basis.

A Hawaii court<sup>107</sup> issued a ruling which struck down the occupancy restriction in a condominium association's house rules because the house rules violated the Fair Housing Act. The court noted that the Hawaii Civil Rights Commission had issued a Determination of Reasonable Cause to Believe that Unlawful Discrimination Practices had been committed by the association against the plaintiffs, based upon state laws.

COUNTIES (Hawaii, Maui, Kauai and the C&C of Honolulu): Each county has different occupancy standards for dwelling units that may affect the way federal fair housing laws are interpreted. County ordinances should be consulted for accurate information. (See **References**, p. 32). The City and County of Honolulu has defined occupancy in terms of superficial floor space,<sup>108</sup> drawing upon the BOCA code.<sup>109</sup>

#### HONOLULU CITY AND COUNTY:

Superficial Floor Area. Every dwelling unit shall have at least one room which shall have not less than 150 square feet of superficial floor area. Other habitable rooms except kitchens shall have a superficial floor area of not less than 70 square feet. Where more than two persons occupy a room used for sleeping purposes, the required floor area shall be increased at the rate of 50 square feet for each occupant in excess of two.<sup>110</sup>

Confusion regarding occupancy standards may continue until a final rule is issued by HUD. Associations generally do one of three things in setting occupancy limits (usually outlined in the house rules):

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106 24 C.F.R. § 882.109(q)(3) (1997).

107 *U.S. v. Tropic Seas*, 887 F. Supp. 1347 (D. Hawaii 1995).

108 HONOLULU, HI., REV. ORDINANCES § 27-4.3(b) (1983).

109 The BOCA Code: The Building Owners and Code Administrators (BOCA) guidelines are stated in terms of *square feet*. BOCA requires a minimum of 150 square feet for the first occupant, and an additional 100 square feet for each additional person. Sleeping areas must have 70 square feet for a single occupant. In situations where two or more persons share sleeping space, BOCA requires a minimum of 50 square feet per person.

110 HONOLULU, HI., REV. ORDINANCES § 27-4.3(b) (1983).

**1. Use a scaled system:**

One bedroom - Two (2) persons

Two bedrooms - Four (4) persons

Note: Although this may be in violation of the Fair Housing Act if, for example, it is applied to a family of three (a couple with a small child) in a one-bedroom apartment, it may be useful in restricting the number of roommates that can occupy a unit. It may be better to note that “the limitation does not apply to disabled persons or families with children.” Such a statement may be used to demonstrate that the association lacks intent to discriminate against the disabled or families with children.

**2. Establish a benchmark**

The association chooses an occupancy limit that applies to all apartments in the complex (c.g., “no more than five (5) persons shall be permitted to occupy an apartment.”)

**3. Do not state occupancy limits.**

**Mixed Use  
Condominiums**

Mixed use condominiums combine public places such as stores, restaurants, or commercial office spaces with residential units. These are commonly found in urban areas, especially areas undergoing various forms of revitalization (such as downtown Honolulu, including Chinatown). While the Americans with Disabilities Act (ADA) generally does not apply to residential condominium associations<sup>111</sup> (since they are not considered a public accommodation under Title III of the ADA), **it does apply to mixed use condominiums.** Under the ADA, public places, such as stores, restaurants and commercial office spaces open to the general public, must be accessible to disabled persons. (See **Section II. ADA**, p. 3) An independent determination should be made regarding the applicability of the ADA to commercial spaces and other questionable areas in mixed use condominiums.

**Recordkeeping Requirements (Individual Owners)**

If an individual owner has three or more housing units for rent or lease, any records involved in a transaction, or applications filed by those not chosen as tenants, must be kept for **one year** from the date of making the record or from the date the occurrence took place for filing with the Civil Rights Commission.<sup>112</sup>

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<sup>111</sup> But see HAW. ATT’Y GEN. REPORT ON ACT 303, 1996 HAW. SESS. LAWS 957 at 8-10.

<sup>112</sup> 12 H.A.R. § 46-304(a)(2)(1995).

However, readers may want to keep records for up to **two years or longer** because within two years of an incident, lawsuits may be filed. Records include any advertisements, agreements, house rules affecting occupancy, etc. Under H.A.R. Title 12 Chapter 46, if a complaint is brought and the records, when requested in the investigation, have been destroyed or are unavailable, **it may be presumed that the evidence contained in the records was adverse to the owner's position.**<sup>113</sup>

## Retaliation

The Fair Housing law<sup>114</sup> and Hawaii law<sup>115</sup> state that retaliation is a discriminatory practice, along with inciting, coercing, aiding or abetting others to engage in discriminatory practices. Hawaii law states:

It is a discriminatory practice for a person, or for two or more persons to conspire: (1) to retaliate, threaten, or discriminate against a person because of the exercise or enjoyment of any right granted or protected by this chapter, or because the person has opposed a discriminatory practice, or because the person has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under this chapter. . .<sup>116</sup>

Filing a discrimination complaint may trigger retaliation. Hawaii's culturally diverse population and dense housing conditions are factors that contribute to confrontational situations. A misinterpreted "look" or "stink-eye" may lead to verbal and physical actions (i.e., terroristic threatening, assault, etc.). If a board member, owner, tenant or prospective tenant files a fair housing complaint, or a complaint is filed against them, it is important for all parties to remain calm and proceed through the proper channels to resolve the problem.

## Steering

Steering is the practice of directing individuals involved in a real estate transaction toward or away from real property in order to deprive them of the benefits of living in a discrimination-free environment. Actions designed to discourage persons from seeking housing in a particular community, neighborhood, development or housing accommodation also constitute "steering."<sup>117</sup>

Example: A wheelchair-bound resident desires to purchase a 12th floor unit because of the view and is willing to pay for

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113 12 H.A.R. § 46-304(a)(2)(1995).

114 42 U.S.C. §3631 (1994).

115 HAW. REV. STAT. § 515-16 (1993).

116 *Id.* § 515-16(1).

117 *Id.* § 515-1.

modifications to make that unit more accessible. Attempts are made to discourage the individual from purchasing the unit and he is only shown a ground floor unit with direct access to the parking lot. The following are acceptable statements about accommodations that attempt to directly address an individual's expressed needs without "steering" the individual:

- *There are units available which are already converted to accommodate wheelchairs. Would you be interested in seeing those units?*
- *Included in the materials provided is a map of the complex with available units marked. It indicates which units are closest to the elevators (or upper level parking garage entrances).*

Another example of prohibited steering is to direct prospective residents only to a particular building because there are other families with children residing there and the other buildings do not contain families with children.

## Unlawful Inquiries

Under federal fair housing laws, it is inherently unlawful to ask questions about the existence, nature or severity of a disability.<sup>118</sup> Asking questions about an individual's disability may constitute disparate treatment because the individual is being treated differently due to a disability. A prospective resident who needs modifications will advise the owner or the board as to what modifications he/she will need to make or ask the association to make. At this point, it would be acceptable to inquire about the disability, and require that the individual provide documentation (a doctor's letter is sufficient; medical records are not required) indicating the individual has a disability and requires reasonable accommodation.<sup>119</sup> When accommodation requests are made, it is advisable to consult legal counsel regarding the applicability of the fair housing laws or the ADA. (*See also Accommodations, Animals: Pets*, p. 15)

It is legal to ask prospective residents or tenants about current illegal abuse or addiction to a controlled substance or whether the individual has been convicted of the illegal manufacture or distribution of a controlled substance. (Alcoholics are a protected class.) If such questions are asked they must be asked of **all individuals** so as not to single-out any one individual or group.

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<sup>118</sup> 42 U.S.C. § 3604(f)(2) (1994).

<sup>119</sup> *Id.* § 3602(h).



Be consistent and provide identical treatment to prospective residents. If there are any forms to be filled out - i.e., medical emergency forms, parking, etc., be sure that every resident is provided the same form and is advised of all the policies and rules.

The topics discussed in this section were selected to provide an introduction and general overview of some of the issues that an association, its board members, owners and managers may encounter in dealing with the complexities of fair housing. It is easy to say "Treat everyone fairly," however, it is important to be aware of the general concepts and language of fair housing to prevent discriminatory situations from developing.

#### **Section IV. Enforcement**

Individuals who feel their rights to fair housing have been violated are encouraged to report the discriminatory action or situation to the appropriate federal or state enforcing agencies. What happens when a fair housing complaint is filed?

#### **Federal Fair Housing Violations**

Violations of federal fair housing statutes may be pursued through the complaint process of the Department of Housing and Urban Development (HUD). A fair housing complaint must be **filed within one year of the alleged violation**. HUD may also initiate action without the filing of a complaint by an individual because the situation calls for "prompt judicial action." HUD has subpoena powers with substantial fines and/or jail time for failure to cooperate.

#### **Filing a Complaint with HUD**

When a complaint is filed with HUD, the agency will:

1. Acknowledge receipt of the complaint.
2. Notify the alleged violator of the complaint and permit that person to submit a response.
3. Investigate the complaint and determine whether there is reasonable cause to believe that federal fair housing laws have been violated.
4. Notify the complainant if an investigation cannot be completed within 100 days of receiving the complaint.

If HUD determines that the State or the local agency, the Hawaii Civil Rights Commission (HCRC), has jurisdiction, HUD will refer the complaint to that agency for investigation and notify the complainant of the referral. The state agency must begin work on the complaint within 30 days or HUD may take the case back.

## HUD Investigation/Litigation

HUD will investigate the complaint and if it finds reasonable cause to believe that discrimination has occurred, it will inform the complainant. The case may then take one of two courses:

### 1. Administrative Hearing

The case may be heard in an administrative hearing within 120 days of the date of filing, unless the complainant or the respondent prefers the case to be heard in a federal district court.

In an administrative hearing, HUD attorneys litigate the case for complainants unless they prefer to be represented by their own attorney. The case is heard by an Administrative Law Judge (ALJ). After hearing evidence, if the ALJ determines that discrimination has occurred, the respondent may be ordered:

- To compensate the complainant for actual damages, including humiliation, pain and suffering.
- To provide equitable relief, i.e., making the dwelling or a comparable unit available.
- To pay the federal government a civil penalty to vindicate the public interest.
- To pay reasonable attorney's fees and costs.

### 2. Federal District Court

If the case is heard in a federal district court, the federal Attorney General will file suit and litigate on behalf of the complainant. If discrimination is found, the court can order relief, award actual damages, attorney's fees and costs, and award punitive damages.

## State Fair Housing Violations

The HCRC is the state agency having jurisdiction to enforce the state's anti-discrimination laws. Discrimination must be based on a "protected class" and **filed within 180 days of the alleged discriminatory act.**

While the HCRC accepts complaints relating to real property (housing), it does not accept general housing complaints and nondiscriminatory landlord-tenant issues. Such complaints are referred to the Office of Consumer Protection, Dept. of Commerce & Consumer Affairs, State of Hawaii.

**Agency Limitations:** The HCRC lacks jurisdiction over the federal government and military. Discrimination must be based on a specific "protected class" (i.e., age, ancestry, color, disability, familial status, HIV infection, marital status, race, religion, sex – sexual orientation is not protected).

Note: If both federal and state anti-discrimination laws have been violated, an individual has up to one year to file a complaint with HUD. If only state statutes have been violated, an individual has 180 days to file with HCRC, and up to two years to file a private course of action.

Penalties ranging between \$500-\$10,000 may be imposed for each violation.

## Filing a Complaint with HCRC

Alleged fair housing violations must be **filed within 180 days of the discriminatory act**. The HCRC will do an intake interview during which the complainant may:

1. Present specific facts about the alleged discrimination.
2. Provide copies of documents, if any, that may substantiate charges lodged in the complaint.

## HCRC Investigation/Litigation

The HCRC will conduct a neutral fact-finding investigation of the complaint(s). Where possible, the HCRC will encourage settlement of complaints through pre-determination settlements. If the HCRC determines that there is reasonable cause to believe discrimination has occurred, it will attempt to eliminate the discrimination and obtain relief for the complainant through conciliation.

If conciliation is not successful, the HCRC may seek relief through an administrative hearing or through the courts. Appropriate remedies may include:

- Providing equitable relief— such as making the unit, or a comparable one, available.
- Allowing modifications to accommodate a disability.
- Taking specific actions to prevent future discrimination.
- Monetary damages, fines or other remedies appropriate to correct the harm caused by the discrimination, including compensatory and/or punitive damages.

## References

### Federal Law, Title VIII of the Civil Rights Act of 1968

For information about the federal law contact:

#### *Fair Housing and Equal Opportunity Division*

U.S. Department of Housing and Urban Development  
7 Waterfront Plaza, Ste. 500  
500 Ala Moana Blvd.  
Honolulu, HI 96813-4918  
☎ 808-522-8182, ext. 269  
Website: <http://www.hud.gov>

#### *Office of Fair Housing and Equal Opportunity*

U.S. Department of Housing and Urban Development  
450 Golden Gate Ave.  
San Francisco, CA 94102  
☎ 1-800-347-3739 (Hotline)

You may also call the *Fair Housing Information Clearinghouse* at:

- ☎ (800) 343-3442 (voice)
- ☎ (800) 483-2209 (TDD)

#### *Office of Fair Housing and Equal Opportunity Department of Housing and Urban Development*

451 Seventh Street, S.W., Room 5116  
Washington, DC 20410-2000  
☎ (202) 708-2878

If you are disabled, HUD also provides:

- A toll-free TDD phone for the hearing impaired: 1-800-927-9275
- Interpreters
- Tapes and braille materials
- Assistance in reading and completing forms

### **TITLE III - Americans with Disabilities Act (ADA)**

For more information or to file a complaint:

Disability Rights Section  
Civil Rights Division  
U.S. Department of Justice  
P.O. Box 66738  
Washington, D.C. 20035-6738  
You may also call for information:  
☎ (800) 514-0301 (voice)  
☎ (800) 514-0383 (TDD)

### **State Law**

#### **Hawaii Revised Statutes (HRS)**

Hawaii Revised Statutes is available for photocopying at any Hawaii State Library branch, public law library such as the Hawaii Supreme Court Law Library located in downtown Honolulu or the William S. Richardson School of Law Library at the University of Hawaii, Manoa.

#### **Hawaii Civil Rights Commission**

830 Punchbowl St., Room 411  
Honolulu, HI 96813  
☎ Voice (Oahu): 808-586-8636  
TDD (Oahu): 808-586-8692  
Toll-free from neighbor islands:  
1-800-468-4644, ext. 6-8686  
E-mail: hcrc@aloha.com

#### **Library for the Blind & Physically Handicapped**

402 Kapahulu Ave.  
Honolulu, HI 96815  
☎ Voice & TTY (Oahu): 808-733-8444  
Toll-free from neighbor islands if registered as "qualified patron":  
1-800-559-4096  
E-mail: olbcirc@lib.state.hi.us  
Fax: 808-733-8449

### **County Information**

Each of the four counties: Hawaii (Big Island), City and County of Honolulu, Kauai and Maui (including Molokai and Lanai), maintains an office to answer questions and provide information relating to fair housing.

County Fair Housing Officers promote public awareness and provide information on fair housing laws. They may also assist you with information about educational programs and materials (seminars, speakers, booklets and/or brochures).

#### **Hawaii County**

Office of Housing and Community Development  
50 Wailuku Drive  
Hilo, HI 96720  
☎ 808-961-8379

#### **Honolulu, City and County**

Fair Housing Officer  
Department of Housing and Community Development  
51 Merchant Street, 2nd Floor  
Honolulu, HI 96813  
☎ 808-527-5957

#### **Kauai County**

Fair Housing Officer  
Kauai County Housing Agency  
4193 Hardy Street  
Lihue, HI 96766  
☎ 808-241-6444

#### **Maui County (includes Lanai and Molokai)**

Department of Human Concerns  
Housing Division  
200 S. High Street, 4th Floor  
Wailuku, HI 96793  
☎ 808-243-7351

## **Information Sources On the Internet**

### **Americans with Disabilities Act Document Center**

**<http://janweb.icdi.wvu.edu/Kinder>**

Comprehensive resource guide to disability information and disability law. Includes ADA statutes, regulations, ADA Accessibility Guidelines, federally reviewed technical sheets, other assistance documents and links.

### **U.S. Department of Justice Office on the ADA**

**<http://www.usdoj.gov/crt/ada/adahom1.htm>**

### **CAO - Community Associations Online (the website of the Community Associations Institute- CAI)**

**<http://www.caionline.com>**

CAO is a global network for those who live in, work for or serve community associations. CAI uses CAO to build better community associations.

### **Internet Legal Resource Guide**

**<http://www.ilrg.com/>**  
or **<http://www.lawrunner.com>**

### **John Marshall Law School Fair Housing Legal Support Center**

**<http://law170.jmls.edu/>**

A resource for researching database cases and materials.

### **The National Fair Housing Advocate (NFHA):**

**<http://www.fairhousing.com>**

The NFHA hosts a comprehensive and useful fair housing website. This site includes a national newsletter, fair housing discussion forum, online databases of fair housing cases, settlements and decisions, and newsletters from fair housing groups across the country.

### **U. S. Government**

#### **Code of Federal Regulations (CFR)**

**<http://www.access.gpo.gov/nara/cfr/cfr-table-search.html>**

#### **HUD**

**<http://www.hud.gov/>**

Fair housing information – various fair housing guides and information.

**<http://www.hud.gov/fairlaws.html>**

Other HUD resources on fair housing.

## **Appendix A Summary of the Law**

**The following summaries are included to help readers gain a general understanding of the laws discussed in this booklet.**

### **The Fair Housing Act**

Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act) prohibits discrimination in the sale, rental and financing of dwellings based on race, color, religion, sex or national origin. Title VIII was amended in 1988 (effective March 12, 1989) by the Fair Housing Amendments Act, which:

- Expanded the coverage of the Fair Housing Act to prohibit discrimination based on disability or on familial status (presence of child under age of 18 and pregnant women);
- Established new administrative enforcement mechanisms with HUD attorneys bringing actions before administrative law judges on behalf of victims of housing discrimination; and
- Revised and expanded Justice Department jurisdiction to bring suit on behalf of victims in federal district courts.

The Fair Housing Act further requires that new multifamily housing developed for first occupancy on or after March 13, 1991, with four or more units, be designed and built to allow access for persons with disabilities. This includes accessible common use areas, doors that are wide enough for wheelchairs, kitchens and bathrooms that allow a person using a wheelchair to maneuver, and other adaptable features within the units.

HUD has taken a lead role in the administering the Fair Housing Act since its adoption in 1968. The 1988 amendments, however, have greatly increased HUD's enforcement role. First, the newly protected classes have proven significant sources of new complaints. Second, HUD's expanded enforcement role took the Department beyond investigation and conciliation into the mandatory enforcement area.

Complaints filed with HUD are investigated by the federal Office of Fair Housing and Equal Opportunity (FHEO). If the complaint is not successfully conciliated then FHEO determines whether reasonable cause exists to believe that a discriminatory housing practice has occurred. Where reasonable cause is found, the parties to the complaint are notified by HUD's issuance of a Determination, as well as a Charge of Discrimination, and a hearing is scheduled before a HUD administrative law judge (ALJ). Either party — complainant or respondent — may cause

the HUD-scheduled administrative proceeding to be terminated by electing instead to have the matter litigated in federal court. Whenever a party has so elected, the Department of Justice takes over HUD's role as counsel seeking resolution of the charge on behalf of aggrieved persons, and the matter proceeds as a civil action. Either form of action — the ALJ proceeding or the civil action in federal district court — is subject to review in the U. S. Court of Appeals.

Additionally, the Department of Justice can file cases involving a pattern or practice of discrimination. The Fair Housing Act may also be enforced through private lawsuits.

### **Significant Recent Changes**

1. In addition to expanding the number of protected classes and creating new enforcement procedures, the 1988 amendments to the Fair Housing Act also created an exemption to the provisions barring discrimination on the basis of familial status for those housing developments that qualified as housing for persons age 55 or older. The Housing for Older Persons Act of 1995 (HOPA) makes several changes to the 55 and older exemption. (See Summary, Appendix A: Housing for Older Persons Act, p. 40)
2. Changes were made to enhance law enforcement including amendments to criminal penalties in Section 901 of the Civil Rights Act of 1968 for violations of the Fair Housing Act in Title VIII. See Section 320103(e) of the Violent Crime Control and Law Enforcement Act of 1994, P.L. 103-322 (9/13/94).
3. Changes were made to provide incentives for self-testing by lenders for discrimination under the Fair Housing Act and the Equal Credit Opportunity Act. See Title II, Subtitle D of the Omnibus Consolidated Appropriations Act of 1997, P.L. 104-208 (9/30/96).

Legal Authority: Fair Housing Act, 42 U.S.C. § 3601, et seq.; 24 C.F.R. Parts 100, 103 and 104.  
Last revised: October 28, 1997

**The Americans with Disabilities Act (ADA)**

The ADA prohibits discrimination on the basis of disability in employment, state and local government, public accommodations, commercial facilities, transportation and telecommunications. It also applies to the United States Congress.

To be protected by the ADA, one must have a disability or have a relationship or association with an individual with a disability. An individual with a disability is defined by the ADA as a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment. The ADA does not specifically name all of the impairments that are covered.

**ADA Title I: Employment**

Title I requires employers with 15 or more employees to provide qualified individuals with disabilities an equal opportunity to benefit from the full range of employment-related opportunities available to others. For example, it prohibits discrimination in recruitment, hiring, promotions, training, pay, social activities and other privileges of employment. It restricts questions that can be asked about an applicant's disability before a job offer is made, and it requires that employers make reasonable accommodation to the known physical or mental limitations of otherwise qualified individuals with disabilities, unless it results in undue hardship. Religious entities with 15 or more employees are covered under Title I.

Title I complaints must be filed with the U. S. Equal Employment Opportunity Commission (EEOC) within 180 days of the date of discrimination, or 300 days if the charge is filed with a designated state or local fair employment practice agency. Individuals may file a lawsuit in federal court only after they receive a "right-to-sue" letter from the EEOC.

Charges of employment discrimination on the basis of disability may be filed at any U.S. Equal Employment Opportunity Commission field office. Field offices are located in 50 cities throughout the U.S. and are listed in most telephone directories under U.S. Government. For the appropriate EEOC field office in your geographic area, call:

(800) 669-4000 (voice)

(800) 669-6820 (TDD)

Information on EEOC-enforced laws may be obtained by calling:

(800) 669-EEOC (voice)      (800) 800-3302 (TDD)

For information on how to accommodate a specific individual with a disability, call the Job Accommodation Network at:

(800) 526-7234 (voice/TDD)

(800) ADA-WORK (voice/TDD)



**ADA Title III: Public Accommodations**

Title III covers businesses and nonprofit service providers that are public accommodations, privately operated entities offering certain types of courses and examinations, privately operated transportation and commercial facilities. Public accommodations are private entities who own, lease, lease to, or operate facilities such as restaurants, retail stores, hotels, movie theaters, private schools, convention centers, doctors' offices, homeless shelters, transportation depots, zoos, funeral homes, day care centers and recreation facilities including sports stadiums and fitness clubs. Transportation services provided by private entities are also covered by Title III.

Public accommodations must comply with basic nondiscrimination requirements that prohibit exclusion, segregation and unequal treatment. They also must comply with specific requirements related to architectural standards for new and altered buildings; reasonable modifications to policies, practices and procedures; effective communication with people with hearing, vision, or speech disabilities; and other access requirements. Additionally, public accommodations must remove barriers in existing buildings where it is possible to do so without much difficulty or expense, given the public accommodation's resources.

Courses and examinations related to professional, educational, or trade-related applications, licensing, certifications, or credentialing must be provided in a place and manner accessible to people with disabilities, or alternative accessible arrangements must be offered.

Commercial facilities, such as factories and warehouses, must comply with the ADA's architectural standards for new construction and alterations.

Complaints based upon Title III violations may be filed with the Department of Justice. In certain situations, cases may be referred to a mediation program sponsored by the Department. The Department is authorized to bring a lawsuit where there is a pattern or practice of discrimination in violation of Title III, or where an act of discrimination raises an issue of general public importance. Title III may also be enforced through private lawsuits. It is not necessary to file a complaint with the Department of Justice (or any federal agency) or to receive a "right-to-sue" letter before going to court.

**The Housing for Older Persons Act (HOPA)**

The Housing for Older Persons Act (HOPA), amending the Fair Housing Act, was signed into law by President Clinton on Dec. 28, 1995. HOPA eases the qualifications that senior housing must meet to be considered eligible as “housing for older persons,” and thereby exempt from the familial status provision of the Fair Housing Act.

Under HOPA, housing intended and operated for occupancy by persons 55 years of age or older is exempt from the familial status (families with children) provisions of the Fair Housing Act provided that:

- At least 80 percent of the occupied units are occupied by at least one person who is 55 years of age or older.
- The housing facility or community publishes and adheres to policies and procedures that demonstrate this intent to be classified as housing for older persons (rather than housing for adults or for singles, for example).
- The housing facility or community complies with rules by the Secretary of HUD for verification of occupancy. These are defined in the law as reliable surveys and affidavits and examples of the types of policies and procedures. [§ 807(b)(2)(C) of the Fair Housing Act; (42 U.S.C. § 3607(b)(2)(C))].

Most importantly, HOPA removes from the Fair Housing Act the requirement that “55 and over” communities provide “significant facilities and services” for older persons to qualify as housing for older persons. This requirement caused tremendous confusion in marketing senior facilities because it was difficult to document whether or not the community met the criteria.

Another important provision of HOPA establishes a “good faith reliance” immunity from damages for persons who, in good faith, believe that the 55 and older exemption applies to a particular property, if they do not actually know that the property is not eligible for the exemption and if the property has formally stated in writing that it qualifies for the exemption. This does not mean that suit cannot be brought; liability still exists where bad faith can be demonstrated. Nor does the law appear to change the potential for liability at the corporate level. Therefore, it is important to make sure that proper insurance policies which will provide both a legal defense and coverage for damages are in place. The association’s insurance policy should be checked to determine whether coverage and a defense will be provided in civil rights cases.

HUD has prepared proposed regulations as required by Congress and they were published for public comment on January 14, 1997. Once final regulations have officially been adopted, HUD will remove regulations outdated as a result of the changed law.

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**Hawaii Real Estate Commission**  
*Alvin Imamura, Chair  
Carol Mon Lee, Esq., Vice Chair  
Charles Aki  
Michael Ching  
Alfredo Evangelista, Esq.  
Mitchell Imanaka, Esq.  
Helen Lindemann  
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John Ohama*

**Real Estate Branch  
Professional and Vocational Licensing Division,  
Department of Commerce and Consumer Affairs,  
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*Calvin Kimura, Supervising Executive Officer  
Christine Rutkowski, Executive Officer  
Cynthia M.L. Yee, Esq., Senior Condominium Specialist  
Camille Chun-Hoon, Esq., Condominium Specialist  
Gina M. Watumull, Esq., Condominium Specialist*

**Hawaii Real Estate Resesarch and Education Center  
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Alicia Kawano Oh, Administrative Officer  
Mark Ushijima, Research Associate**

*Cynthia H. Lee, Esq., Legal Research Consultant*

